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10/533,243	10/28/2005	Willem Herman Kraaijkamp	VER-06-5551	5307
28465	7590	03/11/2009	EXAMINER	
PATENT GROUP				BARTOSIK, ANTHONY N
C/O DLA PIPER US LLP		ART UNIT		PAPER NUMBER
203 N. LASALLE ST., SUITE 1900		3635		
CHICAGO, IL 60601				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/533,243	KRAAIJKAMP, WILLEM HERMAN	
	<b>Examiner</b>	<b>Art Unit</b>	
	ANTHONY N. BARTOSIK	3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 02 December 2008.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-17 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-17 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 04/29/2005 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

This is a Final Rejection sent in response to Applicant's Amendments/Remarks of December 2, 2008.

### ***Drawings***

1. The drawing objection from the previous action has been corrected and is therefore removed.

### ***Claim Objections***

2. The claim objections from the previous action have been corrected and are therefore removed.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**4. Claims 1-3, 5-13, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Hoffmann (US 5,515,655).**

5. In Re claim 1, Figure 1 of Hoffmann discloses at least two tubes (30), of which first, substantially hollow ends project into the subsoil (Fig. 5, 14), and wherein screw

thread-shaped flanges (Fig. 5, 74) are provided on the tubes (30), which support the tubes (30) in the subsoil (14), at least two coupling pieces (28) which are, each axially freely pivotably supported on a second end of the respective tubes (30), and a girder (12) attached the coupling pieces (28).

6. In Re claim 2, Figure 1 of Hoffmann discloses a foil (50) and a clamping section (60), by means of which the foil (50) is clamped on the girder (12). In reading the claims in their broadest sense, the Examiner is interpreting the foil to be a "very thin sheet metal" as defined by *Merriam-Webster Online Dictionary*.

7. In Re claim 3, Col. 5 Lines 59-67 of Hoffmann discloses the construction being a pier construction.

8. In Re claim 5, Figure 1 of Hoffmann discloses at least two tubes (30), each having a first, substantially hollow end, wherein screw thread-shaped flanges (74) are provided on the tubes (30), at least two coupling pieces (28) which fit on second ends of the tubes (30), for being axially freely pivotably supported on the second ends during construction, and a girder (12) for attaching to the coupling pieces (28).

9. In Re claim 6, Col. 7, Lines 1-10 of Hoffmann discloses the modular construction being made of material that consists of steel.

10. In Re claim 7, Figure 1 of Hoffmann discloses the tubes (30) being provided with an engaging element (44) near the heads (18) for cooperation with a driving element for exerting a turning moment on the tubes.

The phrase, "for exerting" above, is a statement of intended use of the claimed invention and must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use it meets the limitations of the claim. Here the bolt (44) is capable of accepting an exerting moment, thereby meeting the intended use limitation of the claim.

11. In Re claim 8, Figure 5 of Hoffmann discloses cutting sections having been formed on the substantially hollow ends of the tubes. The Examiner is considering the edge of the end of tube (30) to be the cutting section in that the end is hollow and the thin wall of the tube provides a cutting section. The Examiner notes that there is a cap currently in the tube, however, nothing in the claim requires the act of cutting. Additionally, the cap could be removed enabling the tube walls to cut the soil.

12. In Re claim 9, Figure 1 of Hoffmann discloses the construction system provided with a clamping section (66, 60, & 68) for clamping a foil (50) between the girder (12) and the clamping section (between 60 & 68).

13. In Re claim 10, Figure 1 of Hoffmann discloses the girder being provided with a flange. The Examiner is considering the vertical extension on the girder to be the flange.

The phrase, "for supporting" found within the claim, is a statement of intended use of the claimed invention and must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use it meets the limitations of the claim.

14. In Re claim 11, Figure 1 of Hoffmann discloses a flange that is bent obliquely upwards with respect to the ground level. The Examiner is considering the radius of the bend to be the oblique portion.

The language allowing the ground level to continue above the water level is a statement of functional language. Functional language found within the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use it meets the limitations of the claim. Here the prior art is capable of performing the functional limitations, and therefore meets those limitations.

15. In Re claim 12, Figure 1 of Hoffmann discloses an attachment means (66, 60, & 68). The language "for attaching" is considered intended use and is treated as previously mentioned.

16. In Re claim 13, Figure 1 of Hoffmann discloses the girder (12) being formed in a plate shape.

17. In Re claim 17, Figure 1 of Hoffmann discloses the clamping section being provided with a flange (60). The language "for supporting" is considered intended use and is treated as previously mentioned.

***Claim Rejections - 35 USC § 103***

18. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**19. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman (US 5,515,655).**

20. In Re claims 14 and 15, Hoffmann renders the claimed method steps obvious since such steps would be a logical manner of assembling Hoffmann.

**21. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman (US 5,515,655) in view of Lambert et al. (US Des. 293,934).**

22. In Re claim 4, Hoffmann discloses the claimed invention except for the building structure for which it provides support being a pergola. Since a pergola is a building structure in need of support, it would have been obvious to one skilled in the art at the time of the invention to secure it to the soil using the anchor of Hoffman in order to prevent the wind from destroying the pergola.

**23. Claims 1, 3, 5-8, and 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krinner et al. (DE 198 36 369 C1) in view of Pylant (US 6,412,235).**

24. In Re claim 1, Figure 3 of Krinner et al. discloses at least two tubes (2), of which first, project into the subsoil, and wherein screw thread- shaped flanges are provided on the tubes (2), which support the tubes (2) in the subsoil, at least two coupling pieces (4) which are, each axially freely pivotably supported on a second end of the respective tubes (2), and a girder (1) attached the coupling pieces (4). Krinner et al. does not teach the end of the tube being hollow.

Figure 1A and Col. 5 Lines 15-19 of Pylant teach the end of the tube being hollow to make it lighter and less expensive. It would have been obvious to one skilled

in the art at the time of the invention to make the tip of Krinner et al. hollow in order to save cost and make it lighter.

25. In Re claim 3, Krinner et al. discloses the construction being a pier construction.

26. In Re claim 5, Figure 3 of Krinner et al. discloses at least two tubes (2), each having a first, wherein screw thread-shaped flanges are provided on the tubes (2) at least two coupling pieces (4) which fit on second ends of the tubes (2), for being axially freely pivotably supported on the second ends during construction, and a girder (12) for attaching to the coupling pieces (4). Krinner et al. does not teach the end of the tube being hollow.

Figure 1A and Col. 5, Lines 15-19 of Pylant teach the end of the tube being hollow to make it lighter and less expensive. It would have been obvious to one skilled in the art at the time of the invention to make the tip of Krinner et al. hollow in order to save cost and make it lighter.

27. In Re claim 6, Col. 5, Lines 9-11 of Pylant teach the tubes being made of steel.

28. In Re claim 7, Figure 1 of Krinner et al. discloses an engaging element (the hole at the top center of 3 in Figure 1) near the header (top of the tube) for cooperation with a driving element for exerting a turning moment on the tubes.

The phrase, “for exerting” above, is a statement of intended use of the claimed invention and must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use it meets the limitations of the claim. Here the hole is capable of accepting an exerting moment, thereby meeting the intended use limitation of the claim.

29. In Re claim 8, Col. 3, Lines 57-62 of Pylant discloses cutting sections being formed on the substantially hollow ends of the tubes.

30. In Re claim 12, Figure 1 of Krinner et al. discloses the tubes being provided with attachment means (the hole at the top center of 3 in Figure 1).

The phrase, “for attaching” within the claim, is a statement of intended use of the claimed invention and must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use it meets the limitations of the claim. Here the hole is capable of accepting a sheet element, thereby meeting the intended use limitation of the claim.

31. In Re claim 13, Figure 3 of Krinner et al. discloses the girder (1) being formed in a plate shape.

32. In Re claims 14 and 15, the combination renders the claimed method steps obvious since it would be a logical manner of using the combination.

33. **Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Krinner et al. (DE 198 36 369 C1) and Pylant (US 6,412,235) as applied to claims 1 and 5 above, and further in view of Lambert et al. (US Des. 293,934).**

34. In Re claim 4, the previously mentioned combination, namely Krinner et al., teaches the construction of a foundation for securing summerhouse and sheds to the soil, but not specifically pergolas. Since a pergola is an equivalent structure in the art as taught by Lambert et al., it would have been obvious to one skilled in the art at the time of the invention to use the combination of claim 1 to secure a pergola.

35. **Claims 2, 9, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krinner et al. (DE 198 36 369 C1) and Pylant (US 6,412,235) as applied to claims 1 and 5 above, and further in view of Post (US 6,517,442) and French (US 4,022,437).**

36. In Re claims 2 and 9, the combination of Krinner et al. and Pylant teach the claimed invention except for the foil and clamping section. Figures 1, 3, and 5 of Post disclose a foil (28) and a clamping section (34) which clamps the foil to a girder for use with a portable ice skating rink. It is well known in the field of portable structures to

secure them to the ground. Figure 1 of French, a similar structure as in Post, teaches that it is well known to secure ice skating rinks to the ground through use of anchors. In French, a series flukes (14) are anchored into the ground to secure the rink.

As taught in French, it would have been obvious to one skilled in the art at the time of the invention to secure the rink of Post to the soil. In following the teachings of French, one of ordinary skill in the art at the time of the invention would have found it obvious to employ an anchor system like the combination set forth in claim 1 to secure the rink to the soil.

37. In Re claim 16, the combination as set forth in paragraph 35 discloses the claimed invention except for the specific step of digging a pond basin. It is notoriously well known to excavate soil to ensure that there is a level surface in order to properly set up a skating rink. It would have been well within the ability to therefore dig a basin to make the rink level. Accordingly, combination renders the claimed method steps obvious since it would be a logical manner of using the combination.

38. In Re claim 17, Figure 5 of Post discloses a flange (44) for supporting a pond edge.

#### ***Response to Arguments***

39. Applicant's arguments filed December 2, 2008 have been fully considered but are not persuasive.

40. Applicant argues that the *Hoffman* reference does not disclose the limitation of “at least two tubes, having substantially hollow ends that project into the subsoil.” In interpreting the claims, Applicant has incorporated limitations not contained within the language of claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The Applicant has incorrectly constructed the language of the claim. The language of the claim only requires that the tube itself have hollow ends that project into the subsoil. As Applicant has correctly pointed out, Hoffman (Fig. 5) discloses the second member (30) being constructed from a pipe that is hollow. Hoffman at Col. 8, Lines 47-52. Applicant has further pointed out that the second member (30) is hollow by exemplifying that a flat plate (38) is inserted onto the end (20) of the second member. Hoffman at Col. 8, Lines 8-10. The second end (20) of the second member is inherently hollow as it is “closed by flat plate (38) to prevent entry of earth therein.”

Applicant has incorrectly read in limitations that the tube must be open ended such that soil is capable of entering the interior of the tube when placed in the subsoil. These limitations are simply not contained within the claims. Accordingly, the Hoffman reference is upheld as it satisfies the claimed limitation of at least two tubes having substantially hollow ends.

41. **Applicant argues** that Krinner in view of Pylant does not disclose at least two tubes having substantially hollow ends. Applicant is again importing limitations from the specification into the claims, and has incorrectly construed the language of the claim. The language of the claim only requires that the tube itself have hollow ends that project into the subsoil. As Applicant pointed out, Pylant disclose at least two tubes that are hollow. "The preferred embodiment is hollow from the top of the upper housing portion 14 to the bottom **tip** of the conical portion 13." Pylant at Col. 5, Lines 1-16.

The Applicant has incorrectly read in limitations that the tube must be open ended such that soil is capable of entering the interior of the tube when placed in the subsoil. These limitations are simply not contained within the claims. Accordingly, the combination of Krinner in view of Pylant is upheld as it satisfies the claimed limitation of at least two tubes having substantially hollow ends.

### ***Conclusion***

42. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANTHONY N. BARTOSIK whose telephone number is (571)270-3112. The examiner can normally be reached on M-F 7:30-5:00; E.D.T.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Richard E. Chilcot, Jr./  
Supervisory Patent Examiner, Art Unit 3635

Anthony Bartosik  
Examiner  
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